IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4225 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M/S. SWAR SHILP PROPERTIES LIMITED

Versus

STATE OF GUJARAT

Appearance:

MR KA PUJ for Petitioners

PUBLIC PROSECUTOR for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/08/2000

ORAL JUDGEMENT

#. The petitioners above named have preferred this petition under Section 482 of the Criminal Procedure

Code, 1973 for quashing of complaint at Annexure-A at page 16 filed by the Registrar of Companies, Gujarat against the petitioners under Section 58A(10) of the Companies Act, 1956. The complaint was filed on 22.12.1999. It seems that the said complaint was filed on the strength of the order at Annexure-D at page 21 passed by the Company Law Board wherein it has been clearly mentioned that if the conditions of the orders are not fulfilled then the Registrar of Companies, Gujarat shall institute prosecution proceedings against the company and its every officers including Managing Director of the Company. This order was passed on 8.10.99. The said order was passed ex-parte and thereafter the petitioners made appearance in the said matter and thereafter second order was passed which is placed at Annexure-C at page 24. The said order was passed on 1.2.2000. By this order, the earlier order was stayed and copy of the order was ordered to be forwarded to the company, the applicants and the Registrar of Companies, Gujarat.

#. Thereafter, the matter was finally heard by the Company Law Board and the orders have been passed, which have been placed at Annexure-D at page 26. The order has been passed on 7.6.2000. There the observations can be found at page 28 which are produced hereunder for ready reference :-

> "I have considered the submissions made by the petitioner present in person and also the submissions made by the Advocate appearing on behalf of the Respondent Company and note that since the petitioner could not produce the original Fixed Deposit Receipts issued by the Respondent Company and also the name of the petitioner does not figure in the Register of Fixed Deposits maintained by the Respondent Company, the application made by the petitioner under section 58A(9) of the Companies Act, 1956 for non-refund of his 7 Fixed Deposits amounting to Rs.7,71,050/= made by him with the Respondent Company viz. M/s. Swar Shilp Properties Ltd. does not lie and the same is hereby dismissed"

#. It is clear that the earlier order of the Company Law Board to institute prosecution against the petitioners has been cancelled and set aside and, therefore, the very basis on which the complaint was filed against the petitioners has been totally done away with. In other words, the complaint was filed on the strength of the

order of the Company Law Board and the same was cancelled by the Company Law Board. In the aforesaid view of the matter the basis has gone and the complaint cannot survive.

#. I have heard learned advocate for the petitioner, learned advocate for the second respondent and leaned APP for the first respondent.

#. When the Company Law Board itself has cancelled the earlier order of its own then the complaint will not survive and, therefore, is required to be quashed. The present petition is allowed. Therefore, the complaint filed by the Registrar of Companies, Gujarat placed at Annexure-A at page No.16 before the learned Additional Metropolitan Magistrate, Ahmedabad is ordered to be quashed and the said court is prevented from prosecuting the said matter further. Rule is made absolute. Direct service is permitted.

(D.P.Buch, J.)
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